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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

CONFEDERATED TRIBES AND
BANDS OF THE YAKAMA
NATION, a sovereign federally
recognized Native Nation,

Plaintiff,

v.

PETER ORTH, Agent in Charge for
the Federal Bureau of Investigation;
YAKIMA COUNTY, a political
subdivision of the State of
Washington; YAKIMA COUNTY
CORONER'S OFFICE, an agency of
Yakima County; JIM CURTICE, in
his official capacity; COWLITZ
COUNTY, a political subdivision of
the State of Washington; COWLITZ
COUNTY CORONER'S OFFICE,
an agency of Cowlitz County;
TIMOTHY DAVIDSON, in his
official capacity,

Defendants.

Case No.:

**YAKAMA NATION'S
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiff, Confederated Tribes and Bands of the Yakama Nation ("Yakama

1 Nation”), signatory to the Treaty with the Yakamas of June 9, 1855, 12 Stat. 951,
2 appears in *parens patriae* on behalf of its enrolled Yakama Members, and alleges the
3 following civil rights action:

4 **1. INTRODUCTION**

5 1.1 This Complaint constitutes a 42 U.S.C. § 1983 and *Bivens v. Six*
6 *Unknown Agents Of Federal Bureau Of Narcotics*, 403 U.S. 388 (1971), civil rights
7 challenge to Defendants’ threatened imminent autopsy of an enrolled Yakama
8 Member’s deceased infant in violation of the Yakama Nation’s and its Members’
9 Washat religion, customs, and traditions (i.e. religious freedoms).

10 1.2 This Complaint further constitutes a civil rights challenge to the non-
11 federal Defendants’ threatened imminent autopsy of the aforementioned deceased
12 infant under Article I, Section 11 of the Washington State Constitution in violation
13 of the Yakama Nation’s and its Members’ Washat religion, customs, and traditions
14 (i.e. religious freedoms).

15 1.3 The Yakama Nation intends to file a Motion for Temporary Restraining
16 Order and Preliminary Injunction shortly following the filing of this Complaint to
17 enjoin Defendants from proceeding with an autopsy of the Yakama Member’s
18 deceased infant during the pendency of this case.

19 1.4 Defendants’ actions violate the Yakama Nation’s constitutional
20 religious freedoms, appearing in *parens patriae* on behalf of all enrolled Yakama
21 Members, under the First Amendment of the United States Constitution, and Article
22 I, Section 11 of the Washington State Constitution. Defendants’ threatened autopsy
23 of an enrolled Yakama Member’s deceased infant should be declared
24 unconstitutional, and Defendants should be enjoined from performing the autopsy
25 and ordered to release the infant to his mother for burial.

2. JURISDICTION AND VENUE

2.1 This Court has jurisdiction over Plaintiff's claim of violation of federal constitutional rights under 28 U.S.C. § 1331 and 42 U.S.C. § 1983.

2.2 This Court has jurisdiction over Plaintiff's claim of violation of state constitutional rights under 28 U.S.C. § 1367(a). Both federal and state claims asserted herein arise from a common nucleus of operative facts, are so related as to form part of the same case or controversy, and constitute actions that would ordinarily be expected to be tried in one judicial proceeding.

2.3 The Court has jurisdiction to grant the declaratory relief sought pursuant to 28 U.S.C. 2201, and other relief—including injunctive relief—sought pursuant to 28 U.S.C. 2202.

2.4 Venue is proper in this District pursuant to 28 U.S.C. 1391(b) because all Defendants are residents of the State of Washington and a substantial part of the events or omissions giving rise to the claim occurred within this judicial district.

3. PLAINTIFF

3.1 The Yakama Nation is a sovereign, federally recognized Nation and signatory to the Treaty of 1855. In the Treaty of 1855, the Yakama Nation reserved all rights not expressly granted to the United States, including its inherent sovereign rights and jurisdiction over its people and its lands both within and beyond the exterior boundaries of the Yakama Reservation. The Yakama Nation appears in *parens patriae* on behalf of its enrolled Members.

4. DEFENDANTS

4.1 Defendant Peter Orth is Agent in Charge for the Federal Bureau of Investigation, who is sued in his individual capacity and in his official capacity.

4.2 Defendant Yakima County is a political subdivision of the State of

1 Washington.

2 4.3 Defendant Yakima County Coroner's Office is an agency of Yakima
3 County.

4 4.4 Defendant Jim Curtice is the Yakima County Coroner, who is sued in
5 his official capacity.

6 4.5 Defendant Cowlitz County is a political subdivision of the State of
7 Washington.

8 4.6 Defendant Cowlitz County Coroner's Office is an agency of Cowlitz
9 County.

10 4.7 Defendant Timothy Davidson is the Cowlitz County Coroner, who is
11 sued in his official capacity.

12 **5. FACTUAL BACKGROUND**

13
14 5.1 The Yakama Nation is a sovereign, federally recognized Native
15 Nation with inherent sovereign and Treaty-reserved rights pursuant to the Treaty of
16 1855.

17 5.2 The Yakama Nation and many of its enrolled Members adhere to the
18 Washat religion, which they have practiced since time immemorial.

19 5.3 In the Washat religion, it is the custom and tradition that enrolled
20 Yakama Members should be buried intact within three days of their death. The
21 belief is that when this world ends, all those who have passed need to be intact to
22 reunite with their family members. This is also the reason why it is against
23 Yakama law to cremate a deceased Yakama Members' remains.

24 5.4 The Yakama Nation has a significant governmental interest in
25 ensuring that those who commit crimes against enrolled Yakama Members are held
26 accountable for their actions, which on rare occasions requires that autopsies be

1 performed on enrolled Yakama Members. In each case, the solemn decision to
2 perform an autopsy on an enrolled Yakama Member must be weighed carefully
3 against the significant and overriding interest in preserving the Yakama Nation's
4 and Washat faith's religious customs and traditions.

5 5.5 On September 17, 2022, Ms. Jayleen Wahsise, an enrolled Yakama
6 Member, called 911 from her location within the exterior boundaries of the Yakama
7 Reservation to report that her infant son was not breathing.

8 5.6 Upon information and belief, Ms. Wahsise's infant son was born with
9 a heart murmur and had been diagnosed with COVID-19 two weeks prior to his
10 death.

11 5.7 Ms. Wahsise transported her infant son to the Toppenish Hospital
12 within the exterior boundaries of the Yakama Reservation, where medical staff
13 attempted to resuscitate him.

14 5.8 Yakama Nation Police responded to Toppenish Hospital within the
15 exterior boundaries of the Yakama Reservation where they made contact with Ms.
16 Wahsise. Upon information and belief, the Federal Bureau of Investigation also
17 responded to Toppenish Hospital related to the same dispatch.

18 5.9 On September 17, 2022, Ms. Wahsise's infant son was pronounced
19 dead at Toppenish Hospital.

20 5.10 Upon information and belief, the Yakima County Coroner's Office
21 took possession of Ms. Wahsise's infant son's remains within the exterior
22 boundaries of the Yakama Reservation, and removed those remains from the
23 Yakama Reservation.

24 5.11 Upon information and belief, the Federal Bureau of Investigation
25 directed the Yakima County Coroner's Office to perform an autopsy on Ms.
26

1 Wahsise's infant son.

2 5.12 In the absence of suspicious circumstances, and given Ms. Wahsise's
3 infant son's medical history, any governmental interest in performing an autopsy is
4 outweighed by the Yakama Nation's significant and constitutionally protected right
5 to practice their religious beliefs and refuse an autopsy based on those beliefs.

6 5.13 On September 18, 2022, the Yakama Nation's legal counsel contacted
7 Defendant Jim Curtice, Yakima County Coroner, and expressed the Yakama
8 Nation's opposition to the performance of an autopsy on Ms. Wahsise's infant son's
9 remains on religious grounds.

10 5.14 Upon information and belief, on September 19, 2022, the Yakima
11 County Coroner's Office transported the decedent's remains to the Cowlitz County
12 Coroner's Office to perform an autopsy on those remains.

13 5.15 On September 19, 2022, the Yakama Nation's legal counsel contacted
14 Defendant Jim Curtice and again expressed the Yakama Nation's opposition to the
15 performance of an autopsy on Ms. Wahsise's infant son's remains on religious
16 grounds. Mr. Curtice confirmed that he was performing the autopsy at the
17 direction of the Federal Bureau of Investigation, and that he would contact the
18 Cowlitz County Coroner's Office and instruct them not to proceed with the autopsy
19 until further discussions were had between the Yakama Nation and Federal Bureau
20 of Investigations.

21 5.16 During the evening of September 19, 2022, the Yakama Nation's legal
22 counsel contacted the Yakima County Coroner's Office and Cowlitz County
23 Coroner's Office who confirmed that the autopsy had not taken place, and who
24 were provided notice that the Yakama Nation intended to file this suit to stop the
25 autopsy from proceeding.
26

1 5.17 During the evening of September 19, 2022, the Yakama Nation's legal
 2 counsel contact Defendant Peter Orth, Federal Bureau of Investigation Agent in
 3 Charge, to inform him of the Yakama Nation's opposition to any autopsy of Ms.
 4 Wahsise's infant son's remains on religious grounds. Agent in Charge Orth
 5 confirmed that the Federal Bureau of Investigation would be proceeding with the
 6 autopsy. The Yakama Nation's legal counsel informed Agent in Charge Orth that
 7 the Yakama Nation would be filing this suit to stop the autopsy from proceeding.

8 5.18 Defendants' threat to imminently conduct an autopsy on Ms.
 9 Wahsise's infant son's remains constitutes a violation of the Yakama Nation's and
 10 its Members' customs and traditions under the Washat religion to bury their loved
 11 ones intact.

12 5.19 Defendants' delay in releasing Ms. Wahsise's infant son's remains to
 13 the family so that they can bury him constitutes a direct violation of the Yakama
 14 Nation's and its Members' customs and traditions under the Washat religion to
 15 bury their loved ones within three days of death.

16 **6. FIRST CLAIM FOR RELIEF AGAINST PETER ORTH**
 17 (*Bivens* Action; Violation of the 1st Amendment of the United States Constitution)

18 6.1 The Yakama Nation hereby incorporates and reasserts all prior
 19 allegations by reference.

20 6.2 The Yakama Nation, appearing in *parens patriae* on behalf of all
 21 enrolled Yakama Members, has a constitutionally protected right under the 1st
 22 Amendment of the United States Constitution to practice their religious beliefs and
 23 to refuse an autopsy based on those beliefs.

24 6.3 The Yakama Nation, appearing in *parens patriae* on behalf of all
 25 enrolled Yakama Members, has a constitutionally protected right under the 1st
 26

1 Amendment of the United States Constitution to practice their religious beliefs and
2 to bury their loved ones within three days after death based on those beliefs.

3 6.4 Defendant Peter Orth, in his individual capacity, acted under the color
4 of federal law to violate those constitutionally protected rights by ordering an
5 autopsy of Ms. Wahsise's infant son, and by preventing the timely release of the
6 infant's remains to his mother.

7 6.5 The Yakama Nation lacks an alternate statutory cause of action for
8 relief from Defendant Peter Orth's actions under the color of federal law.

9 6.6 An appropriate declaratory and injunctive remedy exists at law to
10 address Defendant Peter Orth's constitutional violations.

11 6.7 Plaintiff was required to assign attorneys to represent them in this
12 matter and are entitled to an award of reasonable attorney's fees and costs.

13
14 **7. SECOND CLAIM FOR RELIEF AGAINST ALL DEFENDANTS**
15 (42 U.S.C. § 1983; Violation of the 1st and 14th Amendments of the United States
16 Constitution)

17 7.1 The Yakama Nation hereby incorporates and reasserts all prior
18 allegations by reference.

19 7.2 The Yakama Nation, appearing in *parens patriae* on behalf of all
20 enrolled Yakama Members, has a constitutionally protected right under the 1st and
21 14th Amendments of the United States Constitution to practice their religious
22 beliefs and to refuse an autopsy based on those beliefs.

23 7.3 The Yakama Nation, appearing in *parens patriae* on behalf of all
24 enrolled Yakama Members, has a constitutionally protected right under the 1st and
25 14th Amendments of the United States Constitution to practice their religious
26 beliefs and to bury their loved ones within three days after death based on those

1 beliefs.

2 7.4 Defendants Yakima County, Yakima County Coroner's Office, Jim
3 Curtice, Cowlitz County, Cowlitz County Coroner's Office, and Timothy
4 Davidson, acted under color of state law to deprive the Yakama Nation, appearing
5 in *parens patriae* on behalf of all enrolled Yakama Members, of constitutionally
6 protected rights under the 1st and 14th Amendments of the United States
7 Constitution to practice their religious beliefs, to refuse an autopsy based on those
8 beliefs, and to bury their loved ones within three days in accordance with their
9 religious beliefs.

10 7.5 Defendant Peter Orth, in his official capacity, conspired with or
11 participated in concert with state officials who, under color of state law, acted to
12 deprive the Yakama Nation, appearing in *parens patriae* on behalf of all enrolled
13 Yakama Members, of constitutionally protected rights under the 1st and 14th
14 Amendments of the United States Constitution to practice their religious beliefs, to
15 refuse an autopsy based on those beliefs, and to bury their loved ones within three
16 days in accordance with their religious beliefs.

17 7.6 Plaintiff was required to assign attorneys to represent them in this
18 matter and are entitled to an award of reasonable attorney's fees and costs pursuant
19 to 42 U.S.C. § 1988.

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21 **8. THIRD CLAIM FOR RELIEF AGAINST ALL DEFENDANTS**

22 (Uniform Declaratory Judgments Act; Violation of Article I, Section 11 of the
23 Washington State Constitution)

24 8.1 The Yakama Nation hereby incorporates and reasserts all prior
25 allegations by reference.

26 8.2 The Uniform Declaratory Judgment Act, RCW 7.24, empowers this

1 Court to order the declaratory and injunctive relief sought herein.

2 8.3 Defendants are prohibited by Article I, Section 11 of the Washington
3 State Constitution from violating the Yakama Nation's and its Members' right to
4 practice their religious beliefs, to refuse an autopsy based on those beliefs, and to
5 bury their loved ones within three days in accordance with their religious beliefs.

6 8.4 The impending actions of Defendants violate Article I, Section 11 of
7 the Washington State Constitution by depriving the Yakama Nation's and its
8 Members' right to practice their religious beliefs, to refuse an autopsy based on
9 those beliefs, and to bury their loved ones within three days in accordance with
10 their religious beliefs.

11 9. REQUEST FOR RELIEF

12 WHEREFORE, the Yakama Nation respectfully requests that this Court
13 order the following relief:

14 A. A declaratory judgment pursuant to 42 U.S.C. § 1983, *Bivens*, and 28
15 U.S.C. 2201 declaring that Defendants violated the Yakama Nation's and its
16 Members' religious freedoms protected by the first and fourteenth Amendments of
17 the United States Constitution by depriving the Yakama Nation's and its Members'
18 right to practice their religious beliefs, to refuse an autopsy based on those beliefs,
19 and to bury their loved ones within three days in accordance with their religious
20 beliefs.

21 B. A preliminary and permanent injunction pursuant to 42 U.S.C. § 1983,
22 *Bivens*, and 28 U.S.C. § 2202 enjoining Defendants from performing an autopsy on
23 Ms. Wahsise's infant son, and ordering Defendants to immediately release his
24 remains to his mother.

25 C. A declaratory judgment pursuant to the Uniform Declaratory
26

Judgments Act declaring that Defendants violated the Yakama Nation's and its Members' religious freedoms protected by Article I, Section 11 of the Washington State Constitution by depriving the Yakama Nation's and its Members' right to practice their religious beliefs, to refuse an autopsy based on those beliefs, and to bury their loved ones within three days in accordance with their religious beliefs.

D. A preliminary and permanent injunction pursuant to the Uniform Declaratory Judgments Act enjoining Defendants from performing an autopsy on Ms. Wahsise's infant son, and ordering Defendants to immediately release his remains to his mother.

E. Award the Yakama Nation reasonable attorney fees and costs pursuant to 42 U.S.C. § 1988 and *Bivens*.

F. Award the Yakama Nation such other relief as the Court deems just and appropriate.

Respectfully submitted this 20th day of September, 2022.

s/Ethan Jones

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